IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO : 4661 of 2006
DATED: 4-9-2006

Between:

Y.Koteswara Rao **petitioner**

And

The Presiding Officer,
Industrial Tribunal-cum-Labour Court
Visakapatnam & another
Respondents

THE HON'BLE SRI JUSTICE N.V.RAMANA

WRIT PETITION NO. 4661 OF 2006

ORAL ORDER:

This writ petition is filed questioning the award of the Industrial Tribunal, Visakapatnam in I.D. No. 7 of 2003 dated 21-9-2005 insofar as not granting reinstatement with continuity of service and other consequential benefits.

The petitioner was appointed as driver in the respondent corporation on the basis of the driving licence bearing No. 3421/FDL No.88 dated 1.3.1988 and posted to Palasa Depot. While so, a show cause notice dated 27.5.1998 was issued alleging that the petitioner has cheated the corporation by producing a fake driving licence. The petitioner submitted his explanation and ultimately by proceedings dated 4.7.1998 the petitioner was disengaged from services. It is stated that the respondent corporation took a policy decision to absorb the removed drivers and fixed a cut off date as 30.11.2001 to submit the applications by the removed drivers. The petitioner alleges that he has submitted his representation within the cut off date and no action was taken by the respondents. The appeal preferred by the petitioner was also dismissed by proceedings dated 17-2-1999. Thereafter, the petitioner raised an Industrial Dispute and the same was registered as I.D. No. 7 of 2003. The Industrial Tribunal on consideration of the matter passed an award dated 21st September, 2005. The operative portion of the award reads as under.

> "In the result, though the dismissal order passed against the petitioner cannot be interfered by this Tribunal as it is found to be justified, the petitioner is entitled to be considered for appointment of Driver by the respondent management, as he approached the authorities within cut off date as per

Circular dated PD 43/2000 dated 11.3.2000. Accordingly, the award is passed directing the respondent management to appoint him, as and when any vacancy arises, as Driver in accordance with the Circular No. PD 43/2000 dated 11.3.2000."

Learned counsel for petitioner submitted the Tribunal has not considered the fact that the driving licence submitted by the petitioner at the time of appointment was renewed thrice by the Road Transport Authority, Srikakulam. It is thus contended that the Tribunal ought to have passed an award directing reinstatement with continuity of service and other attendant benefits. It is further submitted that even the award of the Tribunal was not implemented and the petitioner was informed orally that there are no vacancies and his claim would be considered as and when vacancies arise.

On the other hand, learned Standing Counsel for respondent corporation submitted that the petitioner was engaged as contract driver on 3.6.2005 and later on due to slack season his services were disengaged and again on 13.2.2006 he was engaged as contract driver.

Until and unless the writ petition shows any disproportionality in imposing the penalty or it shocks the conscious of the Court this Court cannot exercise its discretion or interfere with the quantum of penalty. In **DIVISIONAL CONTROLLER, KSRTC (NWKRTC) Vs. A.T.MANE** [1], the Apex Court held that once a domestic tribunal based on evidence comes to a particular conclusion, normally it is not open to the appellate tribunals and Courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal.

The aspect of reinstatement was considered by the Tribunal and in view of Ex.M3- letter issued by the R.T.A, Jagdalpur to the effect that the driving licence produced by the petitioner was not issued by the said office, the Tribunal below confirmed the removal order. However, having regard to the fact that the respondent corporation has taken a policy decision to reappoint the drivers who were removed for producing fake certificate and the petitioner has submitted his application within the cut off date has directed the respondents to appoint the petitioner in terms of Circular PD No.43/2000 dated

11.8.2000, as and vacancies arise. Thus, the petitioner has not made out a case for reinstatement but in view of the policy decision of the respondent corporation the Tribunal passed the award directing the respondent management to appoint the petitioner, as and when any vacancy arises. The award of the Tribunal is just and reasonable and needs no interference by this Court. The record produced by the learned Standing Counsel for respondent corporation discloses that the petitioner is being engaged as contract driver during the busy season.

For the foregoing reasons, the writ petition fails and accordingly the same is dismissed. No costs.

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N.V.RAMANA,J

DATE: 4-9-2006

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[1] 2005 (3) SCC 254